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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.R., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B220668 (Super. Ct. No. J1286027) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. MARK R. et al., Defendants and Appellants.	

Mark R. (Father) and Kimberly R. (Mother) appeal orders of the juvenile court denying their modification petitions, declaring that their infant D. is adoptable, and terminating their parental rights. (Welf. & Inst. Code, §§ 388, 366.26.)[1] We affirm.

FACTS AND PROCEDURAL HISTORY

On May 12, 2009, Santa Barbara County Child Welfare Services (CWS) filed a dependency petition on behalf of newborn D.R. CWS alleged that Mother and Father had significant histories of drug abuse, mental illness, and criminal arrests and

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

convictions. D. is Mother's ninth child and Father's second child with Mother. CWS alleged that the juvenile court terminated Mother's parental rights to eight children and Father's parental rights to two children after Mother and Father failed to reunify with the children. (§ 300, subds. (b) [failure to protect minor], (j) [abuse of sibling].)

The juvenile court ordered that D. be detained. CWS placed him in a foster home with foster parents who now seek to adopt him. Following a contested hearing, the court sustained the dependency allegations against Mother and Father pursuant to section 300, subdivision (b). It also ordered that CWS need not provide family reunification services pursuant to section 361.5, subdivision (b)(10), (11). In ruling, the trial judge stated: "I just can't conceive at this point that it's in the best interest of this child to go through the process of reunification with these parents, one of whom has failed eight times in the past and the other who has failed twice in the past, once with a child who the parents have parented jointly . . . ." The court then set the matter for a permanent plan hearing. Neither Mother nor Father filed a petition for extraordinary writ challenging the denial of family reunification services.

Prior to the permanent plan hearing, Mother and Father filed modification petitions pursuant to section 388. Father stated that he completed drug abuse treatment and parent education classes, and provided evidence of income, a residential lease, and a favorable recommendation from his parole officer. Mother stated that she completed six months of drug abuse treatment and parent education classes and also provided a favorable recommendation from the parole officer. Mother and Father requested that the court order family maintenance or reunification services.

At the combined modification petition and permanent plan hearing of November 19, 2009, the juvenile court admitted evidence of current CWS reports and the dependency files for D.'s sibling and two half-siblings. Mother and Father testified that they have completed substance abuse treatment, are now drug and alcohol free, continue to attend meetings of Narcotics Anonymous, and will soon be released from parole. They described their apartment, sources of income, and plans to remain drug and alcohol free.

Mother and Father also stated that they are following their psychiatric medication regimes.

Following argument by the parties, the juvenile court denied the modification petitions. The judge stated: "I don't feel that the parents have . . . met their burden of showing . . . changed, rather than changing, circumstances. [¶] And secondly, and perhaps more importantly, I find that it is really in [D.'s] best interests at this point to move forward with a family that he has been with . . . almost since birth . . . ." The court then found by clear and convincing evidence that D. was adoptable and terminated parental rights.

Indian Child Welfare Act (25 U.S.C. 1901) (ICWA)

At the detention hearing, Mother stated that she has "Cherokee and Sioux Indian [heritage] through [her] mom and dad." Father stated that he had "some Cherokee blood" but was not an enrolled member of any Indian tribe. Mother and Father then completed Judicial Council form ICWA-020, with Father indicating (inconsistently) that, to his knowledge, he has no Indian heritage.

On June 3, 2009, CWS sent notices of the dependency proceedings on Judicial Council form ICWA-030 to three Cherokee Indian tribes and 16 Sioux Indian tribes. The form contained the names and birthdates of Mother and Father, the name and birthdate of the maternal grandmother, the maternal grandfather's name, and the names of the maternal grandmother's parents. CWS later filed postal return receipts for the notices with the juvenile court. Eventually, the Indian tribes responded that ICWA did not apply to D. CWS filed copies of the Indian tribes' responses with the court.

CWS requested the juvenile court to take judicial notice of the file in pending dependency proceedings regarding Mother and Father's previous child, K. (*In re K.R.* (Super. Ct. Santa Barbara County, 2008, No. 1252430).) The court granted the request and received evidence of court rulings that ICWA did not apply to K. In that dependency proceeding, CWS filed copies of the ICWA notice to three bands of Cherokee Indian tribes and the Mohawk tribe, postal return receipts, and the tribes'

responses indicating that K. was neither registered nor eligible to register as a tribal member.

On October 22, 2009, the juvenile court found that ICWA did not apply to D.

Post-Permanency Planning ICWA Notices and Proceedings

Following termination of parental rights, CWS contacted Father's relatives to obtain additional information regarding his Indian ancestry. CWS learned from Father's mother that her father was a Mohawk Indian, and that D.'s paternal grandfather was "French Indian." Neither she nor Father had any contact information for relatives. On May 10, 2010, CWS sent notice of the proceedings on Judicial Council form ICWA-030 to three Cherokee Indians tribes and the Mohawk Indian tribe.[2] The notices contained the names of D.'s four grandparents, the birthdates of D.'s grandmothers, and the names of six of D.'s eight great-grandparents. CWS filed postal return receipts with the juvenile court. The four Indian tribes responded that D. was neither enrolled nor eligible for enrollment. On June 10, 2010, the court again ruled that ICWA did not apply to D.

Mother and Father appeal and contend that: 1) the juvenile court abused its discretion by denying the modification petitions and 2) the juvenile court erred by concluding that ICWA does not apply to D. because the ICWA notifications are incomplete. Mother and Father each join in the briefs filed by the other.

DISCUSSION

I.

Mother and Father argue that the juvenile court abused its discretion by denying their petitions for modification. They assert that they established changed circumstances warranting family reunification services and a return of D. to their custody.

[2] We granted CWS's request to augment the appellate record to include copies of the 2010 ICWA notices, the postal return receipts, a CWS addendum report, the juvenile court's minute order regarding ICWA, and a response by the Eastern Band of Cherokee Indians.

Mother and Father point out that D. was born drug-free, they have completed substance abuse treatment and parent education classes, they will be released from parole soon, and they have an income and an apartment. They contend that the juvenile court improperly considered their poverty, the risk that they would return to drug abuse and crime, and their history of drug abuse in denying their modification petitions.

Section 388 permits a party to petition the juvenile court to change, modify, or set aside a previous court order. (§ 388; *In re A.S.* (2009) 180 Cal.App.4th 351, 357.) The petitioning party bears the burden of establishing, by a preponderance of the evidence, that there is a change of circumstances or new evidence, and that the proposed modification is in the child's best interests. (*Ibid.*) We review the ruling of the juvenile court on a modification petition for an abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 870.) We must affirm the court's ruling unless it is unreasonable. (*Ibid.*) Rarely does the denial of a section 388 motion merit reversal as an abuse of discretion. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

The juvenile court did not abuse its discretion by denying the modification petitions. Although Mother and Father had completed substance abuse treatment, their recoveries are nascent and reflective of changing, not changed, circumstances. Father had been dismissed from a substance abuse detoxification program approximately 18 months prior and Mother admitted that she used methamphetamine during her pregnancy with K. in late 2007 and 2008. (K. was born with drug withdrawal symptoms.) Mother and Father had each missed meetings to treat their substance abuse and neither presently had a 12-step program sponsor. Moreover, although Mother and Father believed their parole periods would end soon, that had not yet happened at the time of the modification petition and permanent plan hearing.

We do not interpret the juvenile court's decision as resting upon Mother and Father's poverty or their histories of failing to reunify with their other children. The juvenile court judge discussed Mother and Father's substance abuse and mental illness problems, applauded their rehabilitation efforts, stated that they had proved only

changing, not changed, circumstances, and determined that it was in D.'s best interests not to reunify with his parents.

II.

Mother and Father claim that the ICWA notices are incomplete and the juvenile court erred by concluding that D. is not an Indian child. Mother points out that the notices did not state her parents' or grandparents' addresses or places of birth. Father asserts that CWS did not inquire of his Indian heritage and that the initial ICWA notices did not state the names of his father or grandparents although his mother testified during the dependency proceedings and knew that information.

The juvenile court properly determined that CWS satisfied the notice requirements of the ICWA and that D. is not an Indian child. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703 [summarizing notice requirements, contents of form, and necessity of filing tribal responses]. In post-permanency planning proceedings, CWS provided complete and proper notice to the three Cherokee Indian tribes, and the Mohawk Indian tribe. The notices contained the available Indian heritage information for Mother's and Father's families, including the names of D.'s grandparents, the birthdates for his grandmothers, and the names of six of his great-grandparents. CWS filed copies of the notices, the postal return receipts, and the responses from the Indian tribes with the court. The court again ruled that the ICWA did not apply to D.

CWS also satisfied its duties of inquiry under ICWA and California law. Mother informed CWS that she has no contact with her mother and that her father is deceased; she provided no further information regarding possible Indian ancestry. CWS was unable to locate dependency files in another county regarding Mother's own dependency more than 25 years ago. CWS contacted Father's mother and obtained the available information regarding his Indian ancestry. "[I]f appellant had additional information suggesting the minor was a member of a particular tribe, or if she had evidence indicating the minor was eligible for membership in one such tribe, then appellant should have tendered that information to the court. Neither the Act nor the

various rules, regulations, and case law interpreting it require [CWS] or the juvenile court to cast about, attempting to learn the names of possible tribal units to which to send notices." (*In re Levi U.* (2000) 78 Cal.App.4th 191, 198-199.)

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

James Herman, Judge

Superior Court County of Santa Barbara

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and Appellant K.R.

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